

## REMARKS

Claims 2, 4-6, 8, 9, 11, 16 and 17 are pending in the application. Claims 11, 16 and 17 have been amended. Claims 10 and 15 have been canceled without prejudice or disclaimer. Reconsideration of this application is respectfully requested.

Independent claim 17 has been amended to incorporate the language of canceled claim 10. Dependent claims 11 and 16 have been amended to provide antecedent compatibility with independent claim 17.

The Office Action rejects claims 2, 4-6, 8-11, 15, 16 and 17 under 35 U.S.C 103(a) as unpatentable over French Patent No. 2,705,766 to Sylvain, hereafter Sylvain in view of United Kingdom Patent No. 2,349,458 to Thorneywork, hereafter Thorneywork, and German Patent No. 4,139,904 to Kummer, hereafter Kummer.

This rejection is moot as to claims 10 and 15, which have been canceled.

This rejection is traversed. The rejection is erroneous because there is no motivation for one skilled in the art to modify Sylvain in the manner suggested by the Examiner. In fact, the suggestion to use Sylvain in combination with Thorneywork and Kummer is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

In particular, the Examiner concludes that it is obvious to one of ordinary skill in the art to modify Sylvain's back wall 16 with Kummer's back wall 3. The Examiner does not provide any motivation for one of skill in the art to make this modification. It is submitted for the reason set forth below that there is no motivation.

Sylvain discloses a convection oven that has a dual purpose of an improved elimination of the toxic gases and smoke produced by the combustion of fats and the discharge of the completely oxidized products of the combustion from the oven. See page 3, lines 9-12, of the English translation of Sylvain. To accomplish the improved elimination of the toxic gas and smoke, Sylvain uses a catalytic converter 20 disposed in an opening 17 of a back wall 16 of the muffle 3. A fan 13 is disposed behind back wall 16 to take in air from muffle 3 via catalytic converter 20. Catalytic converter 20 transforms the airflow by oxidation. Fan 13 circulates the transformed airflow back to muffle 3 via openings 28 in back wall 16.

To accomplish the discharge of the oxidized byproducts of the catalytic transformation, Sylvain uses a chimney 7 disposed centrally of the top wall of muffle 3 (see Fig. 1) and a distribution of openings 28 in back wall 16 into groups according to the four cardinal points around the central axis 29 of catalytic converter 20. This distribution provides a specific airflow in muffle 3 that is well below the top wall of muffle 3 so that there is a space between the airflow and the top wall of muffle 3. This results in air turbulence in this space that allows the discharge of the oxidized byproducts from muffle 3 via chimney 7.

In contrast, Kummer's fan 3 returns oxidized airflow to muffle 1 around the edges of back wall 3 of muffle 1. This airflow is adjacent the top wall of Kummer's muffle 1. That is, the airflow sweeps across the top wall. If Kummer's wall were used in Sylvain's design, the airflow along the top of the muffle would sweep oxidized byproducts along the top wall of muffle 3 and away from chimney 7. This would result in no discharge of the oxidized byproducts from Sylvain's muffle 3.

Moreover, the sweeping action of the airflow would create a negative pressure (Venturi effect) on the muffle side of chimney 7, which would result in a sucking action of air from ambient via collection space 12 and chimney 7 into muffle 3. This would also seriously affect the temperature of the airflow and the cooking of food.

Thus, the modification suggested by the Examiner would render the Sylvain's oven ineffective for its intended purpose of discharge of the oxidized byproducts via chimney 7 or would change the operation of Sylvain as there would be no discharge. In either case, this is tantamount to no suggestion or motivation to make the proposed modification. See MPEP, 2143.01 V and VI.

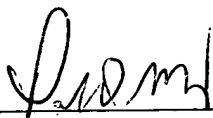
Moreover, it is submitted that one of ordinary skill in the art would not choose to make such a modification because of the elimination of the by-product discharge from Sylvain's muffle 3.

For the reasons set forth above, it is submitted that the rejection of claims 2, 4-6, 8-11, 15, 16 and 17 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

It is respectfully requested for the reasons set forth above that the rejection under 35 U.S.C. 103(a) be withdrawn, that claims 2, 4-6, 8, 9, 11, 16 and 17 be allowed and that this application be passed to issue.

Respectfully Submitted,

Date: 2/9/06

  
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